

- 62K5 COPY

FILED

IN THE UNITED STATES DISTRICT COURT AT ALBUQUERQUE NM
FOR THE DISTRICT OF NEW MEXICO

FEB 18 2000

ADAM P. ARAGON,

ROBERT M. MARCH
CLERK

Applicant,

v.

No. CV-00-0061 JP/WWD

LAWRENCE BARRERAS,

Respondent.

MEMORANDUM OPINION AND ORDER TO CURE DEFICIENCY

This matter is before the Court upon Applicant's application to proceed in forma pauperis (Doc. #2) filed January 13, 2000, and, *sua sponte*, for preliminary consideration of Applicant's application for writ of habeas corpus under 28 U.S.C. § 2254. Rule 4 Governing Section 2254 Cases.

In Applicant's first claim he alleges he has been involuntarily injected with drugs and beaten while in shackles. This claim arises from the conditions of Applicant's confinement but does not question the constitutionality of his incarceration. Although a habeas proceeding can serve to challenge certain conditions of confinement, *Preiser v. Rodriguez*, 411 U.S. 475, 499-500 & n.15 (1973), such an action must be brought as a civil rights case unless the petitioner seeks a "quantum change in the level of custody," *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991), or a reduction of the term of imprisonment. *Id.* at 380; *Rhodes v. Hannigan*, 12 F.3d 989, 991-92 (10th Cir. 1993). Petitioner's first claim does not challenge the "fact or length of his confinement," *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973), and is thus construed as a claim under 42 U.S.C. § 1983 seeking equitable relief. Applicant's first claim will be dismissed.

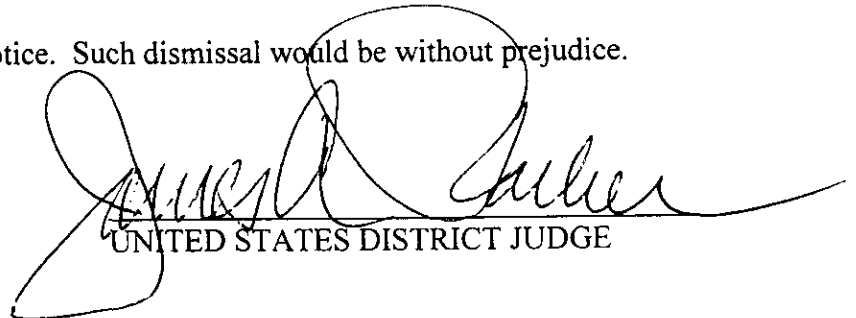
4

Furthermore, Applicant, who is a pretrial detainee, does not state in his § 2254 application whether he has exhausted state court remedies. Applicant will be allowed to submit an amended application, fully completed and specifically describing his attempts to exhaust available state court remedies for each claim.

IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (Doc. #2) is hereby granted, and Applicant may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

IT IS FURTHER ORDERED that Applicant's first claim is DISMISSED without prejudice to Applicant's right to pursue this claim under 42 U.S.C. § 1983;

IT IS FINALLY ORDERED that the Clerk is directed to mail to Applicant, together with a copy of this order, 2 copies of a form § 2254 application with instructions; failure to submit properly completed forms within thirty (30) days from the date of this order may result in dismissal of this proceeding without further notice. Such dismissal would be without prejudice.



UNITED STATES DISTRICT JUDGE